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302 NLRB No. 133

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Kennedale TX

UNITED ~~STATES OF AMERICA~~

BEFORE THE NATIONAL LABOR ~~RELATIONS~~ BOARD

~~ELECTRICAL~~ ENERGY SYSTEMS, INC.
~~AND ITS ALTER EGO~~ POWRCORP
ELECTRICAL CONTRACTORS, INC.

and

Case 16--CA--14763

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS UNION 116,
AFL--CIO

May 9, 1991

DECISION AND ORDER

By Members Devaney, Oviatt, and Raudabaugh

Upon a charge filed by the Union on September 24, 1990, the General Counsel of the National Labor Relations Board issued a complaint on November 16, 1990, against Electrical Energy Systems, Inc. and its alter ego Powrcorp Electrical Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On November 27, the Respondent filed an answer, admitting in part and denying in part the allegations of the complaint.

On February 5, 1991, the Respondent withdrew its answer to the complaint. On February 15, 1991, the General Counsel filed a Motion for Summary Judgment and a memorandum in support.

On February 21, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Although on November 27, 1990, the Respondent filed an answer to the complaint as required by the Board's Rules, on February 5, 1991, it withdrew its answer to the complaint.

As there is no outstanding answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

Electrical Energy Systems, Inc. (Respondent Electrical Energy Systems) and Powrcorp Electrical Contractors, Inc. (Respondent Powrcorp), collectively the Respondent, are Texas corporations, engaged in the business of commercial electrical installation at their office and facility in Kennedale, Texas. During the 12-month period preceding the complaint, the Respondents, in the course and conduct of their business operations, collectively and individually purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. Alter Ego/Single Employer

On a date in October 1989, Respondent Powrcorp was established by Respondent Electrical Energy Systems as a subordinate instrument to, and a disguised continuance of, Respondent Electrical Energy Systems. At all times material, Respondent Electrical Energy Systems and Respondent Powrcorp have been affiliated business enterprises with common officers, ownership, and management, common premises and facilities, have interchanged personnel with each other and have shared equipment.

Respondent Electrical Energy Systems and Respondent Powrcorp are, and have been at all material times, alter egos and a single employer.

B. Representation

Since about January 9, 1989, the Union has been designated and recognized by the Respondent Electrical Energy Systems as the exclusive bargaining representative of the employees in the following unit:

> All employees of the employer performing bargaining unit work within the geographical jurisdiction of the Union, excluding all guards and supervisors within the meaning of the Act.

By virtue of Section 9(a) of the Act, the Union, at all times since that date, has been and is now, the exclusive representative of the unit employees for the purposes of collective bargaining regarding rates of pay, wages, hours, and other terms and conditions of employment.

About June 1, 1989, Respondent Electrical Energy Systems and the Union entered into a 1-year collective-bargaining agreement effective from June 1, 1989, to May 31, 1990, and year to year thereafter, unless changed or terminated in accordance with contract provisions. The collective-bargaining agreement covered wages, hours, and terms and conditions of employment and provided for an exclusive hiring hall, wage scales, and employer contributions

to various benefit plans. It also contained a provision permitting the parties to reopen the contract during its term without its termination. The Respondent has not terminated the collective-bargaining agreement with the Union in accordance with its terms and, therefore, the agreement continues in full force and effect for the period June 1 to May 31, 1991, or until otherwise terminated.

C. Refusal to Bargain

By letter dated February 26, 1990, the Union notified the Respondent Electrical Energy Systems that, pursuant to the contractual provision, it was opening the collective-bargaining agreement. Thereafter, between about March 29 and about June 5, the parties met and bargained over wages, hours, and terms and conditions of employment without concluding an agreement or declaring impasse.

Since about early September, the exact date being unknown, and continuing to date, Respondent Electrical Energy Systems, through its alter ego, Respondent Powrcorp Electrical Contractors, has employed employees and performed bargaining unit work within the Union's geographical jurisdiction without applying the terms and conditions of the collective-bargaining agreement.

Since on or about September 24, the Respondent has refused to bargain with the Union, repudiated the collective-bargaining agreement, and, in the absence of mutual agreement, unilaterally changed wages, hours, and terms and conditions of employment by:

(a) failing to use the contractually established, exclusive hiring hall;

(b) failing to pay wages at the rates set out in the collective-bargaining agreement; and

(c) failing to make contractually required fringe benefit payments.

The Respondent engaged in this conduct without prior notice to the Union, without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct and for the purpose of avoiding its obligations to the Union as exclusive bargaining representative.

We find that the acts of the Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By using employees of Respondent Powrcorp to perform bargaining unit work within the Union's geographical jurisdiction without applying the terms and conditions of the collective-bargaining agreement, failing to use the contractually established exclusive hiring hall, failing to pay wages at the rates set forth in the collective-bargaining agreement, and failing to make contractually required fringe benefit payments, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to abide by the terms of its collective-bargaining agreement with the Union.

Having found that it unlawfully failed to use the contractually established Union hiring hall, we shall order the Respondent to offer employment to those individuals who should have been hired from the hiring hall and make them whole for any loss of earnings they may have suffered as a result of the Respondent's unlawful conduct, in the manner described in F. W.

Woolworth Co., 90 NLRB 289 (1950). Interest on backpay shall be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

We shall also order the Respondent to reinstate retroactively to September 24, 1990, the wages, hours, and other terms and conditions of employment in effect in accordance with the provisions of the collective-bargaining agreement immediately prior to the Respondent's unlawful conduct, and to make whole any unit employees in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), for any losses of earnings and other benefits they suffered as a result of the Respondent's unlawful conduct commencing September 24. Interest on backpay shall be computed in the manner prescribed in New Horizons for the Retarded, supra. In addition, we shall order the Respondent to make employees whole for any losses suffered as a result of the Respondent's unlawful refusal to make contractually required fringe benefit payments. This shall include reimbursing employees for any premiums or direct payments they may have made to third parties or other costs validly incurred to continue benefit coverage in the absence of the Respondent's required payments. Kraft Plumbing & Heating, 252 NLRB 891 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

Having found that the Respondent unlawfully failed to make contractually required fringe benefit payments to the Union, we shall order the Respondent to make whole its employees by transmitting the required payments to the Union, as set forth in Merryweather Optical Co., 240 NLRB 1213 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Electrical Energy Systems, Inc. and its alter ego Powrcorp Electrical Contractors, Inc., Kennedale, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of the employees in the appropriate unit by unilaterally changing the wages, hours, or other terms and conditions of employment by:

(1) failing to use the Union's hiring hall as its exclusive source of employees as required by the collective-bargaining agreement;

(2) failing to pay its employees wages at the rates set out in the collective-bargaining agreement;

(3) failing to make the contractually required fringe benefit payments to the Union; and

(4) using employees of Respondent Powrcorp Electrical Contractors, Inc., to perform bargaining unit work within the Union's geographical jurisdiction, without applying the terms and conditions of the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by all terms of the collective-bargaining agreement effective June 1, 1989, through May 31, 1990, and continued in full force and effect from June 1, 1990, to May 31, 1991, or until otherwise terminated in accordance with its terms.

(b) Reinstate retroactively to September 24, 1990, the wages, hours, and other terms and conditions of employment in effect, pursuant to the provisions of the collective-bargaining agreement, immediately prior to the Respondent's unlawful conduct, and make whole with interest all unit employees who suffered

losses in wages or contractually required fringe benefits commencing on September 24, 1990, as set forth in the remedy section of this decision.

(c) Offer employment to those individuals who should have been hired from the Union's hiring hall, placing them in those positions they would have occupied had the hiring hall been used in accordance with the collective-bargaining agreement, if those positions still exist, and make them whole with interest for any loss of earnings they may have suffered as a result of the Respondent's failure to use the Union's hiring hall, as set forth in the remedy section of this decision.

(d) Remit to the Union or the appropriate benefit fund all fringe benefit amounts owed by the Respondent, as set forth in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facilities in Kennedale, Texas, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(g) Notify the Regional Director in writing within 20 days of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 9, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers Union 116, AFL--CIO as the exclusive bargaining representative of the employees in the appropriate unit by unilaterally changing the wages, hours, and other terms and conditions of employment by:

failing to use the hiring hall of the International Brotherhood of Electrical Workers Union 116, AFL--CIO, as our exclusive source of employees, as required by the collective-bargaining agreement;

failing to pay employees wages at the rates set out in the collective-bargaining agreement;

failing to make contractually required fringe benefit payments to the Union or to the appropriate benefit fund;

using employees of Powrcorp Electrical Contractors, Inc., to perform bargaining unit work within the Union's geographical jurisdiction without applying the terms and conditions of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL abide by the terms of the collective-bargaining agreement effective June 1, 1989, through May 31, 1990, and continued in full force and effect from June 1, 1990, to May 31, 1991, or until otherwise terminated in accordance with its terms.

WE WILL reinstate retroactively to September 24, 1990, the wages, hours, and other terms and conditions of employment in effect, pursuant to the provisions of the collective-bargaining agreement, immediately prior to the unlawful change occurring about September 24, 1990, and WE WILL make whole with interest all unit employees who suffered losses in wages or contractually required fringe benefits commencing on September 24, 1990.

WE WILL offer employment to those individuals who should have been hired from the Union's hiring hall, placing them in those positions they would have occupied had the hiring hall been used in accordance with the collective-bargaining agreement immediately prior to the unlawful change occurring about September 24, 1990, and make them whole with interest for any loss of earnings they may have suffered as a result of our unlawful conduct.

WE WILL remit to the Union or the appropriate fringe benefit fund all fringe benefit amounts owed.

ELECTRICAL ENERGY SYSTEMS,
INC. AND ITS ALTER EGO
POWERCORP ELECTRICAL
CONTRACTING, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 819 Taylor Street, Fort Worth, Texas 76102-6178, Telephone 817--334--2941.